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PROCEDURE INSTRUCTION LETTER NO. I11-V-11

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SUBJECT: Part 100 Safety and Health Conference Procedures

Scope

This Procedure Instruction Letter (PIL) supersedes Procedure Instruction Letter No. I09-III-03 and Program Information Bulletin 09-05, issued March 27, 2009, and applies to Mine Safety and Health Administration (MSHA) personnel who are responsible for conducting and managing safety and health conferences held pursuant to 30 Code of Federal Regulations (C.F.R.) § 100.6.

Purpose

The purpose of this PIL is to outline procedures to implement the pre-assessment conference process in MSHA districts. Under the existing system, conferencing typically has been deferred until after the penalty assessment and a timely contest. District Managers may grant safety and health conferences to review citations and orders and resolve issues prior to civil penalty assessment and potential litigation.

The number of contested proposed penalties increased dramatically between 2007 and 2010, creating a large backlog of violations awaiting adjudication before the Federal Mine Safety and Health Review Commission (FMSHRC). To help reduce the backlog, District Managers are authorized and encouraged to implement the pre-assessment conference process immediately. However, in light of the backlog and other enforcement initiatives, District Managers have the discretion, in accordance with the existing regulation and available resources, to decide whether or not to hold a conference.

Procedure Instructions

The Safety and Health Conference provides the mine operator and the miners' representative an opportunity to hear MSHA's interpretation of regulations and to discuss and resolve factual disputes relating to violations prior to the civil penalty

assessment and potential litigation. As specified in (C.F.R.) § 100.6, mine operators and miners' representatives are afforded the opportunity to review with MSHA each citation and order issued during an inspection, prior to the assessment of a penalty. A safety and health conference request must be submitted within 10 days of MSHA providing notice to the parties; notice is given by MSHA following a close out conference at the mine. A conference request must be in writing (e-mail or fax is acceptable) and include the specific reasons for the request that each citation or order be conferenced. Failure to timely request a safety and health conference or to provide a brief written statement indicating the specific reason is a basis for denying a conference request.

It is within the sole discretion of MSHA to grant a request for a conference and to determine the nature of the conference. The conference is limited to hearing mitigating circumstances provided by the operator and considering any additional supporting documentation such as photos, maps, plans, etc. Citations or orders will only be modified or vacated based on factual documented evidence. Estimated penalty amounts may be discussed along with the effects of any modifications; however, penalty settlements are not part of this conferencing process.

MSHA will use five main procedural steps when conducting safety and health conferences as follows:

1. Scheduling Conferences.

Upon receiving a written request, MSHA will evaluate the circumstances in deciding to grant or deny the request and notify all affected parties. If granted, MSHA will notify in writing all affected parties including the mine operator, miners' representative, contractor, issuing inspector, and the inspector's supervisor of the conference, i.e., subject, date, time, and location of the conference. MSHA maintains the right to limit the conference parties.

Once the conference has been granted, the Conference Litigation Representative (CLR) or designated MSHA representative (DMR), e.g. field office supervisor, shall ensure that citations/orders being conferenced are not processed by the Office of Assessments to prevent a civil penalty from being assessed until the completion of the conference and a decision rendered.

The CLR/DMR will obtain the following information prior to the conference: documentation of the conference notification, citations/orders to be conferenced along with the issuing inspector's notes, and any other citation/order documentation or relevant information.

2. Records of Conferences.

MSHA will enter and maintain a record/log of all citations/orders conferenced in the ACR data system.

3. Preparation for Conference.

MSHA will create and maintain a Safety and Health Conference File containing all of the correspondence, relevant inspection report documents and resources used during the conference.

After the initial review of the materials, the CLR/DMR must document contact with the issuing inspector to determine if any additional relevant information is available. In final preparation for the conference, the CLR/DMR must review in detail: the citations/orders being conferenced; applicable sections of 30 C.F.R., the Mine Act and MINER Act; applicable safety and health standards; applicable MSHA handbooks on citation and order writing, general inspection procedures, health inspections, haul road inspections, etc.; Program Policy Manual; applicable FMSHRC and Administrative Law Judge (ALJ) decisions; applicable directives, and compliance guides.

4. Conference Procedure.

The conference is a pre-penalty conference that is conducted to determine the merits of the citations/orders based upon facts, regulations and/or policy and if they were appropriately issued by the inspector. At the conference, questions regarding the issuance of the citation or order, including the inspector's evaluation of negligence, gravity and good faith, should be discussed with all affected parties. The pre-penalty conference does not include any negotiations/settlement agreements. Each party will be allowed to present mitigating circumstances. MSHA will consider any evidence or mitigating circumstances provided and notify each affected party of its decision. The CLR/DMR is responsible for maintaining control of the conference and ensuring its purpose is fulfilled.

The following actions should be taken during the health and safety conference:

- a. Explain the conference procedure in detail to the participants prior to commencing the conference and determine a spokesperson for each party.
- b. Review the citations/orders which are being conferenced.
- c. Permit the spokesperson for the operator/contractor who requested the conference to state his/her position fully without interruption. The information should also include what the operator/contractor is requesting such as actions to vacate, reduce negligence, change the number of persons affected, reduce the likelihood of injury, injury expected, or type of action.
- d. If other parties are present and will present information which is relevant to the citations/orders being conferenced, they will be permitted to state their position also without interruption.
- e. The issuing inspector will not generally attend or participate in the conference; however, in instances where MSHA determines that he/she can contribute valuable information or technical expertise that could affect the decision regarding the citations/orders being conferenced, the inspector will be given an opportunity to participate in the conference. At no time will the inspector be permitted to be cross-examined by anyone in attendance.

- f. Following the operator/contractor stating his/her position, the CLR/DMR may ask questions to clarify statements, conditions or other pertinent items.
- g. Following the completion of the conference, the CLR/DMR will inform the participants that he or she will review the additional information provided and render a decision. The CLR/DMR will not provide his or her decision at the conclusion of the conference.
- h. If additional facts or circumstances provided during the conference warrant additional clarification and/or research, the CLR/DMR will gather such information and also contact the issuing inspector and supervisor for additional information and/or discussion.
- i. The basis for any changes (modifications, vacates, or interpreting the standard) to the citations/orders will be consistent with MSHA's guidelines/handbooks/policy/procedures/directives.
- j. If changes are necessary to correct errors and to ensure appropriate issuances, the CLR/DMR will issue all subsequent actions resulting from the safety and health conference.
- k. The CLR/DMR must communicate the reasons for actions taken to modify or vacate citations/orders, such as current FMSHRC decisions, recurring evidence deficiencies, etc. to the District Manager and enforcement personnel in order to achieve uniform application of regulations. The District Manager or designee must provide a written Monthly Summary Report that briefly describes conference decisions that result in changes to the citations/orders to management, supervisory and enforcement personnel in the District.
- l. Following the completion of the safety and health conference, the CLR/DMR will release the hold on the citations/orders to permit the Office of Assessments to process the citations/orders and determine the appropriate civil penalty assessment for the operator/contractor.

5. Record Keeping Requirements.

On completion of a safety and health conference, MSHA will make a record of the results and ensure prompt filing of all documents related to the conference. If a conference request is denied, that request and subsequent denial will also be filed.

Background

30 C.F.R. part 100 grants MSHA the sole discretion to determine the nature and timing of safety and health conferences. The procedures outlined in this PIL constitute an exercise of this discretion to give District Managers the appropriate flexibility to effectively manage the increasing CLR caseload.

Authority

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801 et seq.; and 30 CFR part 100.

Internet Availability

This PIL may be viewed on the Internet by accessing MSHA's home page at www.msha.gov then choosing "Compliance Info" and then "Procedure Instruction Letters."

Filing Instructions

A copy of this PIL should be filed in the Alternative Case Resolution Handbook.

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